

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

WILLIAM SYPHER AND THE
VERMONT STATE COLLEGES
FACULTY FEDERATION, AFT
LOCAL 3180, AFL-CIO

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DOCKET NO. 81-24

FINDINGS OF FACT, OPINION, AND ORDER

Statement of Case

On March 25, 1982, the Vermont Labor Relations Board issued its Findings of Fact, Opinion, and Order in this case. 5 VLRB 102 (1982). On April 7, 1982, the Federation filed a Motion to Retract and Reconsider and a Motion to Reopen for Additional Evidence.

The Federation advanced two arguments:

1. The Board gave undue significance to the testimony by Dean Rose Marie Beston that Virginia Larrabee was incensed by William Sypher's ("Grievant") teaching in her department; and the Federation had no opportunity at the hearing to cross-examine Larrabee.
2. The last two paragraphs of the Board opinion, suggesting Grievant's personality and lack of tact and judgment were legitimate reasons for not retaining him, are not proper indicators of teaching effectiveness and should have played no part in the Board's decision.

On May 6, 1982, the Board granted Grievant's Motion to Retract and Reconsider, and a hearing was held June 3, 1982, at the Board hearing room in Montpelier, to take the testimony of Virginia Larrabee. The full Board was present. Stephen Butterfield, Grievance Chairperson, represented the Federation. The Colleges were represented by Attorney Nicholas DiGiovanni, Jr.

At the hearing, the Board indicated it would delete the final two paragraphs of the Opinion, at 5 VLRB 135, and they are thereby deleted. Also deleted from the Opinion, due to its reference to the last two paragraphs, is the parenthetical phrase beginning on Line 5 of the first full paragraph on page 133 providing "although, as we point out later, she legitimately could."

Briefs were filed by the Federation and the Colleges on June 18 and 21, 1982, respectively.

FINDINGS OF FACT

1. Virginia Larrabee is a Professor of Education at Castleton State College. She has been employed at the College for 16 years and at all times relevant served as department chairperson for the Education Department.

2. One of the faculty members in the Education Department, Judy Gollib, took a leave during the Spring semester, 1980. Upon the recommendation of Gollib, Grievant, a faculty member in the English Department, was hired to cover one of her courses that semester, a course entitled "Multi-Cultural Education". The course, offered every year through the Special Education section of the Department, was designed to introduce students to the varying cultural characteristics of children they may later find in their classroom.

3. Grievant was hired for just the one course, and there was no expectation he would continue to teach in the Education Department.

4. There were nine students in the class. Grievant gave several graduating seniors in the course failing grades at mid-term. Five of the students in the class went to see Dr. Larrabee complaining about the course. The students expressed their concern to Dr. Larrabee about not

graduating because of the failing grades, and also complained about the course content which they believed was not relevant to their future work. The emphasis in Grievant's course related to the cultural characteristics of foreign countries and the students would be teaching in the United States.

5. The emphasis in Grievant's course was not the emphasis Dr. Larrabee wanted since the students would be teaching in the United States. She had discussed her expectations with Grievant before the course started and provided Grievant with a course syllabus.

6. Soon after talking with students, Dr. Larrabee went to see Dean Beston because she was concerned about the students not graduating. She discussed the students' complaints with the Dean.

7. We have carefully weighed the testimony of both Dean Beston and Dr. Larrabee; and we find the most creditable facts concerning this incident to be that Dr. Larrabee told Dean Beston the students in the class were very upset with the teaching attitude of Grievant, that they felt their opinions were not being valued in class; and asked Beston that Grievant never be allowed to teach in her Department again. Accordingly, we reaffirm Finding of Fact No. 14 in our March 25, 1982, decision.

8. Dr. Larrabee discussed the students' complaints with Grievant. The graduating seniors ultimately received passing grades.

9. Dr. Larrabee never observed Grievant's teaching or reviewed his student evaluations.

OPINION

Dr. Larrabee's testimony has not convinced us to alter our original findings concerning her discussion with Dean Beston regarding Grievant's teaching. We find sufficient creditable evidence exists on this record, even though some facts are in dispute, from which the President could have reasonably concluded Grievant was not above average in teaching effectiveness.

Still, the outcome of this case does not turn on the discussion between Dr. Larrabee and Dean Beston. In its brief, the Federation states the Board gave this conversation "determinative weight". That is a misinterpretation of our original opinion.

The Agreement negotiated by the parties, which we are required to honor, gives very limited rights to second-year faculty members. The President is normally not required to give any reasons for non-reappointment (Article XXIII, Agreement), and has "complete discretion" in such cases. In re Esther Swett and the Vermont State Colleges Faculty Federation v. Vermont State Colleges, ___ Vt. ___ (June 1, 1982). We are required to examine the reasons for termination only after the grievant demonstrates a prima facie case that protected conduct played a role in the President's decision. Mt. Healthy v. Doyle, 429 US 274 (1977). However, we have concluded Grievant had not demonstrated his protected activities were a motivating factor in his non-reappointment. That being so, the decision whether to reappoint Grievant was at the complete discretion of the President. Nor do we believe that the Larrabee-Beston incident was manufactured by management, or that it is a subterfuge to conceal unconstitutional conduct. Therefore, in its simplest posture, this case merely decides that Grievant had not carried his burden of establishing a prima facie case of constitutional deprivation.

In our original opinion, we discussed the conversation between the Dean and Dr. Larrabee in relation to Grievant's teaching effectiveness, only because we were convinced the outcome of this case would have been the same if Grievant had made a prima facie case. Dr. Larrabee's testimony added nothing to resolving the primary question: whether protected conduct played a part in the reappointment decision. The non-reappointment of Grievant would have been allowed to stand even without our examination of teaching effectiveness.

The Federation makes an eloquent plea in its brief that we recognize Grievant's rights of free speech and affirm the right of learned and perhaps unpopular people to speak and argue forcefully in public without fear of retribution for the ideas expressed. Similarly, it argues that the practice of kowtowing to student insistence on passing grades without regard to actual merit is destructive of both faculty rights and collegiate integrity. We, no less than the Federation, would protect the Constitution and safeguard the faculty's academic integrity. We differ, though, in our view of the facts. As we see it, Grievant simply was not retaliated against for the unpopularity of his views, having the temerity to express them forcefully in public to the discomfort of his employer, or refusing to be a party to rewarding unearned academic merit; at least he did not convince us these were the facts. Accordingly, the great principles of the First Amendment and Academic Freedom are not threatened by our decision here. Perhaps we have not correctly divined the facts; the subtle motivations for the Dean's and the President's actions may have escaped us. We trust they have not, but we certainly have no intent to weaken the legal principles the Federation so eloquently advocates. We are likewise

aware that important Constitutional issues may be undermined if fact-finders require too stringent proof so that legal wrongs are not corrected under the guise of concluding that no facts requiring action exist. We have carefully examined what happened here with these considerations firmly in mind. Having done so, we decline to alter our judgment.

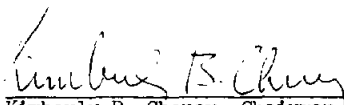
ORDER

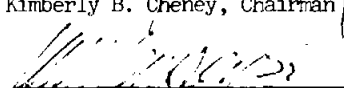
Now, therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

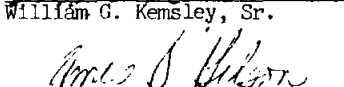
The Finds of Fact, Opinion, and Order of March 25, 1982, in the Grievance of William Sypher and the Vermont State Colleges Faculty Federation shall STAND, except that the final two paragraphs of the Opinion and the parenthetical phrase beginning on Line 5 of the first full paragraph on Page 133 providing "although, as we point out later, she legitimately could" are deleted.

Dated this 7th day of July, 1982, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD


Kimberly B. Cheney, Chairman


William G. Kemsley, Sr.


James S. Gilson